INDEX

	Page
Opinions below	1
Jurisdiction	2
Question presented	2
Statute involved	2
Statement	3
Specifications of error to be urged	8
Summary of Argument	9
Argument:	
I. Where the offense charged is wilful failure to produce records in response to a committee subpoena, as distinguished from perjury before the committee, the presence or absence of a quorum of the committee at the time of appearance and refusal is immaterial; *Christoffel* v. *United States*, 338 U. S. 84, is plainly distinguishable	12
II. In any event, since respondents did not base their refusal to produce the subpoenaed records on asserted absence of a quorum of the committee to receive them, they could not, at their subsequent trial for wilful default, base their defense on this ground	18
Conclusion	24
Cases:	
Barsky v. *United States*, 167 F. 2d 241, certiorari denied, 334 U. S. 843, petition for rehearing pending, No. 766, O. T. 1947	5, 8
Blair v. *United States*, 250 U. S. 273	15
Carman v. *Emerson*, 71 Fed. 264	20
Christoffel v. *United States*, 338 U. S. 84	9, 12, 13, 22, 23
In re Hall, 296 Fed. 780, appeal dismissed, 2 F. 2d 1016	21
Leber v. *United States*, 170 Fed. 881	21
London Guarantee & Accident Co. v. *Doyle & Doak*, 134 Fed. 125, certified question relating to another issue answered *sub nom. Doyle* v. *London Guarantee Co.*, 204 U. S. 599	21
United States v. *Groves*, 18 F. Supp. 3	21
Wilson v. *United States*, 221 U. S. 361	16
Statutes:	
22 D. C. Code (1940 ed.), § 2501	9
R. S., § 102, as amended, 52 Stat. 942, 2 U. S. C. 192	2, 5, 9, 13, 15
Miscellaneous:	
92 Cong. Rec. 3761–3773	4–5
Rule X, Rules of the House of Representatives, Seventy-Ninth Congress, House Doc. No. 810, 78th Cong., 2d sess., p. 306	6

In the Supreme Court of the United States

OCTOBER TERM, 1949

No. 98

UNITED STATES OF AMERICA, PETITIONER

v.

ERNESTINA G. FLEISCHMAN

No. 99

UNITED STATES OF AMERICA, PETITIONER

v.

HELEN R. BRYAN

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE UNITED STATES

OPINIONS BELOW

The majority and dissenting opinions in the Court of Appeals in No. 98 are reported at 174 F. 2d 519 (F. R. 305–314) and in No. 99 at 174 F. 2d 525 (B. R. 71).[1]

[1] The records in the *Fleischman* and *Bryan* cases will be designated by the letters F. and B., respectively.

JURISDICTION

The judgments of the Court of Appeals were entered on April 8, 1949 (F. R. 314–315; B. R. 72). The time for filing the petition for writs of certiorari was extended by Mr. Chief Justice Vinson to and including June 6, 1949 (F. R. 317; B. R. 76). The petition was filed on June 3, 1949, and was granted on October 17, 1949 (F. R. 317; B. R. 76). The jurisdiction of this Court is conferred by 28 U. S. C. 1254 (1). See also Rules 37 (b) (2) and 45 (a), F. R. Crim. P.

QUESTION PRESENTED

Whether the lack of a quorum of a congressional committee on the return of a subpoena to produce records constitutes a defense to a charge of wilful default, where objection to the production of the records was not made on that ground.

STATUTE INVOLVED

Revised Statutes, § 102, as amended, 52 Stat. 942, 2 U. S. C. 192, provides:

> Every person who having been summoned as a witness by the authority of either House of Congress to give testimony or to produce papers upon any matter under inquiry before either House, or any joint committee established by a joint or concurrent resolution of the two Houses of Congress, or any committee of either House of Congress, willfully makes default, or who, having appeared, refuses to answer any question pertinent to the question un-

der inquiry, shall be deemed guilty of a misdemeanor, punishable by a fine of not more than $1,000 nor less than $100 and imprisonment in a common jail for not less than one month nor more than twelve months.

STATEMENT

Prior to April 4, 1946, the date of the default involved in these cases, the Committee on Un-American Activities of the House of Representatives had unsuccessfully attempted to procure certain records from the Joint Anti-Fascist Refugee Committee (hereinafter refered to as the JAFRC), from the chairman of its executive board, Dr. Edward K. Barsky, and from its executive secretary, the respondent Helen R. Bryan (F. R. 107–109, 128, 244; B. R. 35–38). On March 29, 1946, in a further effort to secure the records, the Committee issued subpoenas to each of the known members of the executive board, among them the respondent Ernestina G. Fleischman, and summoned each of them to appear on April 4, 1946, to testify and produce the books, ledgers, records and papers of the JAFRC relating to the receipt and disbursement of moneys and correspondence with persons in foreign countries during the period from January 1, 1945, to and including March 29, 1946 (F. R. 97, 106, 109, 123–124, 128–129, 239). An identical subpoena directed to the JAFRC by name was issued and served upon respondent Bryan, who accepted service in her official capacity as executive secre-

tary (B. R. 36–37). Respondents Bryan and Fleischman, as well as others, appeared before the Committee on April 4, 1946, but each failed to produce before the Committee any of the records described in the subpoena (F. R. 110, 123–124, 142; B. R. 35–46). Instead, each board member appearing before the Committee read from identical typewritten documents stating that he or she individually did not have possession, custody or control of the books and records requested in the subpoena and, therefore, was unable to comply with the subpoena, but that such material was in the custody and control of respondent Bryan (F. R. 125, 145). In response to the question whether she personally would consent to the Committee's inspection of the books, respondent Fleischman indicated that she did not know and questioned the relevancy of such an inquiry (F. R. 130–131). Miss Bryan, on the other hand, admitted that she was the custodian of the records but refused to comply with the subpoena because "after consulting with counsel [she] came to the conclusion that the subpoena was not valid" (B. R. 38, 46). In addition, she indicated that she "didn't know" whether she would produce the records if she were directed to do so by appropriate vote of the executive board (B. R. 44). The members of the executive board and respondent Bryan were thereafter cited for contempt by the House of Representatives (92 Cong. Rec. 3761–3773).

On March 31, 1947, respondent Fleischman and the other members of the executive board were charged in a two-count indictment filed in the United States District Court for the District of Columbia with conspiracy to commit contempt of Congress by wilfully failing to produce records before a congressional committee in accordance with the summons of that committee and thereby wilfully making default, in violation of R. S. § 102 (*supra,* pp. 2–3) (count 1) and also with committing the substantive offense defined in that section (count 2) (F. R. 1–5). Respondent Bryan was charged in a separate indictment filed the same day with committing the same substantive offense (B. R. 1–2). Each of the two respondents was tried separately, Mrs. Fleischman having been out of the country when the other members of the executive board were tried.[2]

At the outset of the trial of respondent Fleischman, the first count of the indictment was dismissed (F. R. 10, 280). At both trials, gov-

[2] The remaining board members were tried together, found guilty on the second count, and their convictions were affirmed on appeal. *Barsky* v. *United States*, 167 F. 2d 241 (C. A. D. C.), certiorari denied, 334 U. S. 843, petition for rehearing pending, No. 766, O. T. 1947. The evidence adduced by the Government in the *Barsky* case to prove the pertinency of the records subpoenaed by the Committee was by stipulation admitted for the same purpose in the respondents' trials (F. R. 151–155; B. R. 24, 51). This evidence, which is summarized in our brief in opposition in the *Barsky* case, is not material here.

ernment witness Ernie Adamson, counsel for the Committee on Un-American Activities at the time of the offenses in question, testified that he could not undertake to state which members of the Committee were present at any particular time during the April 4, 1946, session of the Committee, at which respondents appeared, since the members, in accordance with their usual custom and practice, left and returned to the hearing room sporadically. He was certain, however, that at least five or six members were present all through the day, though he could not indicate which ones they were. (F. R. 144, 146–148; B. R. 47–50.)[3] The printed transcript of the Committee's proceedings on that date show that at least six different Committee members addressed questions to the several witnesses on that occasion, five members to Mrs. Fleischman (F. R. 125–130) and four to Miss Bryan (B. R. 35, 36, 46).[4] No evidence in this respect was

[3] The Committee on Un-American Activities consists of nine members. Rule X, Rules of the House of Representatives, Seventy-Ninth Congress, House Doc. No. 810, 78th Cong., 2d sess., p. 306.

[4] It appears from this transcript that respondent Fleischman was asked questions by Representatives Bonner (F. R. 125, 126), Landis (F. R. 125, 127, 129, 130), Wood (F. R. 125, 126, 128, 129, 130), Mundt (F. R. 126, 127), and Thomas (F. R. 127). Respondent Bryan was interrogated by Representatives Landis (B. R. 39, 40, 45), Mundt (B. R. 35, 43, 44, 45), Rankin (B. R. 46), and Wood (B. R. 36, 37, 38, 39, 40, 41, 42, 43, 44, 45).

offered on behalf of respondents (F. R. 279; B. R. 54–55).

The trial court instructed the jury in Fleischman's case that the elements of the offense were (1) issuance of a subpoena by the Committee, (2) service of the subpoena, (3) custody, dominion or control of the records in the defendant, and (4) wilful failure to produce them. In addition, the court instructed the jury in each case "as a matter of law, that the Committee on Un-American Activities of the House of Representatives was a validly constituted committee of the Congress, and was at the time of the defendant's appearance" (F. R. 283; B. R. 59–60). In Fleischman's case, the court further instructed the jury "that the members of the committee before whom the defendants appeared, pursuant to the subpoenas served on them, constituted a sufficient quorum to carry on the investigation" (F. R. 283). In Bryan's case, the following request and ruling by the trial court occurred during the giving of the instructions (B. R. 62):

> Mr. ROGGE [counsel for Miss Bryan]. Your Honor, the first point we want to make is a charge with reference to quorum.
>
> The COURT. I hold it as a matter of law.

Each respondent was found guilty and sentenced to three months' imprisonment and to pay a fine of $500 (F. R. 6–7; B. R. 18–19).

The Court of Appeals, one judge dissenting, reversed both convictions on the ground that the question whether five members of the Committee, constituting a quorum, were present at the time of respondents' appearances was a material question of fact in dispute which should have been submitted to the jury (F. R. 305–307, 314–315; B. R. 72).[5] Accordingly, the instruction that as a matter of law a quorum was present, the majority thought invaded the province of the jury and was reversible error (F. R. 306). Judge Prettyman, dissenting, expressed the view that proof of a quorum was not an essential element of a *prima facie* case of wilful default because neither respondent asserted that her noncompliance with the subpoena was due to the absence of a quorum at the time and place designated therein (F. R. 308–314).

SPECIFICATIONS OF ERROR TO BE URGED

The Court of Appeals erred:

1. In holding that lack of a quorum of a congressional committee on the return of a subpoena *duces tecum* constitutes a defense to a charge of

[5] Alleged errors relating to the presence of government employees on the juries and other alleged errors identical with those relied on in the *Barsky* case were not considered by the Court of Appeals. In addition, respondent Fleischman contended that the trial court erred in refusing to grant a judgment of acquittal for failure of proof that she was responsible for the nonproduction of the records. A majority of the court (Judges Proctor and Prettyman), however, decided against her on this point.

wilful default in failing to comply with the subpoena, notwithstanding that no suggestion that a quorum was lacking was made at the hearing and no contention was advanced at any time that noncompliance with the subpoena was due to lack of a quorum.

2. In holding that the presence or absence of a quorum was a material factual issue which should have been left to the jury.

3. In reversing the judgments of conviction.

SUMMARY OF ARGUMENT

I

Brought under R. S., § 102, the prosecution in these cases was for wilfully *making default* after having been summoned by the authority of a Congressional Committee to produce papers upon a matter under inquiry. The essence of the offense was a wilful *failure to act* where a duty to act existed. The offense here was negative in character—a failure to do that which a legally imposed duty required to be done. The wilfulness of such failure to act was provable, and here proved, by positive acts and declarations by respondents, but this fact does not detract from the essentially negative character of the offense itself.

The *Christoffel* case, 338 U. S. 84, involving the affirmative offense of perjury, is clearly distinguishable. That case involved a prosecution for perjury under 22 D. C. Code (1940 ed.),

§ 2501, proscribing the wilful giving of false testimony before a "competent tribunal." It was held that in a prosecution under that statute, it was incumbent on the Government to establish and for the jury to find that at the exact time an allegedly false statement was made before a Congressional Committee, a quorum of the committee was present, since otherwise the committee would not have been shown to be a "competent tribunal." In these cases, the applicable statute imposes no duty on the Government to show that at the time of default, a quorum of the committee was present.

There is no question in these cases of the validity of the subpoenas themselves, and hence no issue as to the competence of the Committee to issue the subpoenas, or as to whether a quorum of the Committee concurred in their issuance.

When members of Congress purport to function as a committee to receive records called for by a subpoena which has been duly issued by the authority of a House of Congress, the subpoenaed person may not flout the summons on the ground that the committee was incompetent, without even expressing a challenge on that ground. The demand for the records could be satisfied by turning them over to less than a majority of the committee, to a single member of the committee, or indeed to the clerk of the committee. The gist of the indictments was the refusal to produce the records at any time. The effect of the offenses

charged was to deprive Congress of pertinent information in aid of its legislative function. It was quite irrelevant how many members of the Committe were present to hear respondents announce their refusal to comply with the subpoenas. Consequently, it was not error for the trial court not to submit to the jury, as a material issue in the case, the factual question of whether or not a quorum of the Committee was present when respondents appeared before it.

II

But even if the absence of a quorum of the Committee at the time respondents appeared and announced their refusal to comply with the subpoenas could be considered relevant had respondents declined to comply therewith on that ground, the quorum question was not relevant in this case because they did not in fact base their refusal to comply on that ground. No question as to the presence or absence of a quorum was raised by any one at the time of respondents' appearance before the Committee. It was not until their trials, two years later, that respondents sought to raise the quorum question. Under these circumstances, the principle, announced in numerous lower court decisions, that one who may have an excuse for not obeying a subpoena may not safely remain silent, but must communicate his excuse to the tribunal or suffer the consequences of wilful contempt, should here control.

This was the view of the minority of the Court in the *Christoffel* case. Under this view, respondents were in no wise prejudiced by the challenged instruction which in effect removed the quorum question from the jury's consideration, since there is no question that they made no objection before the Committee on this ground.

If, therefore, contrary to the view of Judge Prettyman, dissenting below, and to our primary contention in this case, it should be felt that the *Christoffel* decision stands in the way of reversal of the judgments below, we submit that that decision should be reconsidered and overruled.

ARGUMENT

I

WHERE THE OFFENSE CHARGED IS WILFUL FAILURE TO PRODUCE RECORDS IN RESPONSE TO A COMMITTEE SUBPOENA, AS DISTINGUISHED FROM PERJURY BEFORE THE COMMITTEE, THE PRESENCE OR ABSENCE OF A QUORUM OF THE COMMITTEE AT THE TIME OF APPEARANCE AND REFUSAL IS IMMATERIAL; "CHRISTOFFEL V. UNITED STATES," 338 U. S. 84, IS PLAINLY DISTINGUISHABLE

In *Christoffel* v. *United States*, 338 U. S. 84, this Court held that in a prosecution under 22 D. C. Code (1940 ed.), § 2501, providing for the punishment of "Every person who, having taken an oath or affirmation before a *competent tribunal*, * * * that he will testify * * * truly, * * * wilfully and contrary to such oath or

affirmation states or subscribes any material matter which he does not believe to be true" [italics added], it is necessary for the Government to prove that at the exact time an allegedly false statement was made before a Congressional Committee a quorum of the committee was present. The reason for this holding was that a committee without a quorum is not a "competent" committee and therefore not a "competent tribunal" within the meaning of the perjury statute there involved. The narrow issue in that case was whether it was proper to instruct the jury that if a quorum of the committee was present at the beginning of a session and no question of the lack of a quorum was thereafter made, the absence of a majority later in the session would not affect the existence of the committee as a competent tribunal—this having been the traditional House custom and practice. See our brief in the *Christoffel* case, No. 528, O. T. 1948, pp. 15–18, 23–24. The Court held, in a five-to-four decision, that such an instruction was erroneous.

While the instant case has some features in common with the *Christoffel* case, the issue here is different. Each of the respondents was convicted under R. S., § 102, *supra*, pp. 2–3, as a "person who having been summoned as a witness by the authority of either House of Congress * * * to produce papers upon any matter under inquiry before either House, * * * or any committee of either House of Congress, wil-

fully *makes default*" [italics added]. The essence of the offense charged was a wilful *failure to act* where a duty to act existed. While such failure to act may be proved, and was here proved, by evidence of certain positive acts, nevertheless the actual offense, unlike the offense of perjury, consists of something negative rather than affirmative—a failure to do that which a legally imposed duty requires to be done.

There is no question in this case, it must be emphasized, of the validity of the subpoenas themselves. Hence there is no issue as to the authority or competence of the Committee to issue the subpoenas, or as to whether a quorum of the Committee concurred in the issuance of the subpoenas. The simple issue is whether, valid subpoenas requiring respondents to produce certain records having been issued, it was necessary for a quorum of the Committee to be present when respondents appeared and announced their intention not to comply with the subpoenas, in order for them to be guilty of wilful "default" under the statute. The majority below held that this was required, and that consequently it was incumbent on the Government to establish, as a material part of its case, and for the jury to find, under proper instructions, that a quorum of the Committee was present at the time of respondents' appearance and contumacious refusal to comply with the subpoenas. The dissenting judge felt that this was not necessary, that the Govern-

ment was not required to establish this as part of its case, that the jury did not have to so find, and that consequently there was no error in the instruction which in effect eliminated this question from the jury's consideration. We submit that the dissenting judge was clearly correct.

The effect of the decision below is to require a congressional committee which has duly issued a subpoena *duces tecum* to go through the futile and time-consuming gesture of holding a formal meeting at the time specified in the subpoena even though the person who has been subpoenaed unqualifiedly declares that he will not honor the subpoena regardless of the composition of the committee or even if he does not appear at all. If the meeting is not held, according to the court below, the sanction prescribed by R. S. § 102 for contempt of Congress cannot be invoked. In our view, the orderly and efficient dispatch of congressional business militates against that result.

In *Blair* v. *United States,* 250 U. S. 273, 282, this Court stated that a witness before a court or grand jury "* * * is not entitled to challenge the authority of the court or the grand jury, provided they have a *de facto* existence and organization." When members of Congress purport to function as a committee to receive records called for by a subpoena which has been duly issued by the authority of a House of Congress, it would seem inconsistent with the prin-

ciple of the *Blair* decision to permit the person subpoenaed to flout the summons on the ground that the committee was incompetent, without even expressing a challenge on that ground. The tendency and effect of respondents' conduct was not one whit different whether four or five members of the Committee were present at the precise moment of their appearance; in either case their refusal to produce the records deprived Congress of pertinent information in aid of its legislative function. Indeed, to the extent that the subpoena seeks merely the production of documents, it is not a subpoena to testify at all (cf. *Wilson* v. *United States,* 221 U. S. 361), and the presence or absence of a quorum is a wholly irrelevant consideration in relation to the failure to produce the documents. The demand for the documents could be satisfied merely by turning them over to the clerk of the committee, regardless of whether the committee was in fact sitting at the moment. The gist of the indictments was the refusal to produce the documents at any time.

We respectfully recommend to the Court the reasoning and conclusions of the dissenting judge below. He said:

> The indictment was for a willful default in failing to respond to a subpoena. A default is negative. It is not an act but is a failure to act. A person subpoenaed to produce books consciously and deliberately

does not produce them. He is in default. [F. R. 309.]

* * * * *

A willful default may be evidenced by a declared refusal to respond, or it may be simply a deliberate failure to do anything. A subpoenaed person might appear before the full committee and elaborately, vociferously and defiantly declaim his rebellion against the summons and the committee. Another subpoenaed person might, without saying anything to anybody, but with deliberate resolve to avoid obedience, simply go fishing on the appointed day. The latter's default is as complete as that of the former. Whatever may be the factual circumstances, the default is completed when the summons is not obeyed, and if the disobedience is intentional, a willful default has occurred. [F. R. 309.]

* * * * *

The trial judge told the jury that the elements of the offense are (1) a valid subpoena, (2) legal service, (3) custody, dominion or control over the records, and (4) a willful failure to produce. I think that was correct. I think that it makes no difference whether a subpoenaed person actually makes a declaration of refusal to comply or, if he makes one, who hears it. I think that if these persons had intentionally stayed in New York and done nothing, they would have committed willful default. To be sure, an intent to default is plainer if there be a proclaimed refusal to respond.

But such proclamation is not essential; much less is it essential that there be a proclamation of refusal in the presence of a quorum of the Committee. A stated refusal to respond is merely evidence of intent and might be made to members of the Committee, one member, a representative, or someone not connected with the Committee; or intent might be proved without any specific declaration of refusal. A default, in my view, is complete when there is an intended failure to respond to the subpoena. [F. R. 310.]

* * * * *

My view is that if failure to comply and intention not to comply are proved, and if the accused does not assert that he wished and tried to comply, it is immaterial whether he appeared before a quorum or not. Therefore, I do not think it was error for the trial court to fail to submit to the jury, as a material issue in this case, the question of fact whether there was or was not a quorum of the Committee present when appellant made her statement. [F. R. 312.]

II

IN ANY EVENT, SINCE RESPONDENTS DID NOT BASE THEIR REFUSAL TO PRODUCE THE SUBPOENAED RECORDS ON ASSERTED ABSENCE OF A QUORUM OF THE COMMITTEE TO RECEIVE THEM, THEY COULD NOT, AT THEIR SUBSEQUENT TRIAL FOR WILFUL DEFAULT, BASE THEIR DEFENSE ON THIS GROUND

Under the preceding point, we have urged that, the subpoenas being valid, the question of whether

or not a quorum of the Committee was present when respondents appeared and refused to comply therewith could under no circumstances be considered a relevant issue. Here we urge that, even if the presence of a quorum could be considered relevant had respondents declined to comply with the subpoenas on the announced ground that a quorum was not present to receive the sought for documents, the quorum question was clearly not relevant in this case because the refusal to produce the documents was never based on this ground.

It is undisputed that neither respondent, when she appeared before the Committee, based her refusal to produce the requested records on claimed absence of a quorum of the Committee to receive them. Though respondents had the benefit of advice of counsel prior to the hearing (F. R. 251; B. R. 39, 43), at no time was any suggestion made by them, by any other witnesses, or by their counsel that a quorum was not present. Neither did any member of the Committee suggest the lack of a quorum. Nobody, in fact, at any time prior to the trial of these cases, ever raised any question as to absence of a quorum when respondents appeared before the Committee. The default of respondents and the other witnesses was reported to the House of Representatives in due course and citations for contempt issued. It was not until their trials, two years later, that respondents

sought to raise the point that the presence of a quorum of the Committee had not been proved.*

Under these circumstances, the rule of *Carman* v. *Emerson*, 71 Fed. 264, 267 (C. A. 8), would seem to be applicable. It was there held that although a person served with a subpoena may have an excuse for not obeying it, he cannot safely remain silent, but must communicate his excuse to the tribunal or suffer the consequences of wilful contempt. The Court said (71 Fed. at 267):

> * * * It is a contempt of court for a witness who is duly served with a subpoena to appear and testify to treat the command of the court with silent contempt, and neither appear nor take any means of bringing to the attention of the court the existence of facts which would excuse him from attending. The service of the writ of subpoena imposes upon a witness the duty of treating the process of the court with decent respect, and of either attending the court in person or causing to be brought to the attention of the court the facts which in law will excuse him from attending. If he does not do this, he justly subjects himself to an attachment which is not necessarily purged by simply showing that his employment was such as exempted him from attending

* As we have pointed out at pp. 6–7, *supra*, the uncontradicted evidence of the Government at the trial was to the effect that a quorum of the Committee was at all times present during the appearances of respondents before it.

> court as a witness, or that he was not subject to be subpoenaed because of the distance he resided from the place where the court was held. * * * If he has a good answer to the exigencies of the writ, he must bring it to the attention of the court in apt time and manner on pain of being treated precisely as though he had no defense whatever.

This doctrine is equally applicable in a situation where, as here, a witness refuses to comply with a subpoena on one ground and later asserts an entirely different one for his noncompliance. It has been held that where the copy of a subpoena which was served upon a witness contained a discrepancy in the return date from that contained in the original subpoena, the error afforded no defense to contempt proceedings against him for failure to appear, since he did not appear at either time but based his refusal on other grounds. *Leber* v. *United States,* 170 Fed. 881, 888 (C. A. 9). Similarly, it is a familiar principle that objections of a witness to a subpoena because of exemption from service are waived unless raised on the return day. *In re Hall,* 296 Fed. 780 (S. D. N. Y.), appeal dismissed, 2 F. 2d 1016 (C. A. 2).[7]

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[7] See also *United States* v. *Groves,* 18 F. Supp. 3, 5 (W. D. Pa.); *London Guarantee & Accident Co.* v. *Doyle & Doak,* 134 Fed. 125, 128 (C. C. E. D. Pa.), certified question relating to another issue answered *sub nom. Doyle* v. *London Guarantee Co.,* 204 U. S. 599.

Under the circumstances of this case, we submit that the following observations of Mr. Justice Jackson, in his dissenting opinion in the *Christoffel* case (338 U. S. at 91–92), in which three other members of the Court joined, should be adopted by the Court:

> * * * In the absence of objection raised at the time, and in the absence of any showing of a rule, practice or custom to the contrary, this Court has the duty to presume that the conduct of a Congressional Committee, in its usual course of business, conforms to both the written and unwritten rules of the House which created it. * * *
>
> * * * * *
>
> * * * the issue is not whether a quorum is required in order for the Committee to be a competent tribunal, but whether committee rules, practices and records, and congressional rules, practices and records in analogous situations, are subject to attack by later oral testimony and to invalidation by the courts.

It may be assumed, *arguendo,* that if either respondent raised the question of no quorum when she appeared before the Committee, and if her objection, being well taken, had been overruled, she would have been at liberty to "walk out"; but since neither raised any such question, having based her refusal to comply with the subpoena on entirely different grounds, she could

not later, at the trial, be heard to say that her refusal did not amount to wilful default within the meaning of the statute because of the subsequently claimed absence of a quorum. *Id.*, pp. 92–93.

If we are right in these views, it follows that respondents were in no wise prejudiced by the challenged instruction since they made no objection before the Committee that a quorum was lacking.

If, contrary to the view of Judge Prettyman below and that presented earlier in this brief, it should be felt that this Court's decision in *Christoffel* v. *United States,* 338 U. S. 84, stands in the way of reversal of the judgments of the court below, the Government respectfully urges that that decision be reconsidered. The short time in which that decision has been in effect has precluded action taken in reliance upon it and, if that decision is deemed erroneous, it is better that that be made clear sooner rather than later, when a different ruling might touch the asserted rights of those who may claim to have acted in the light of the *Christoffel* decision.

The Government's reasons for believing *Christoffel* to have been wrongly decided need no more statement than that already available in the dissenting opinion in that case. These cases, no more than *Christoffel,* justify judicial rejection of the congressional judgment, evidenced here by contempt citations voted by the full House, that

the procedures here taken were within the authority of the Committee. Those who, like respondents, do not raise objections to lack of a quorum when they can be met and who do not even suggest that they would not have defaulted had a quorum been present, are hardly in a position to ask this Court to reject the considered view of a governmental branch of equal stature.

CONCLUSION

The judgments below should be reversed.

Respectfully submitted.

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